

STATE OF NORTH CAROLINA  
COUNTY OF BUNCOMBE

SETTLEMENT AGREEMENT AND RELEASE

NOW COMES the Parties, CAROL ANDERSON (the "Owner") and THE BUNCOMBE COUNTY BOARD OF EDUCATION (the "Board") (collectively the "Parties") and, on this 29th day of March 2018, enter into the following SETTLEMENT AGREEMENT AND RELEASE (the "Agreement").

WHEREAS, the Owner owns a tract of real property described in Book 1231 at Page 523 in the Buncombe County Registry (the "Property");

WHEREAS, the Board owns a tract of real property described in Book 1001 at Page 629 in the Buncombe County Registry (the "Board Property");

WHEREAS, the Owner has alleged that storm water from the Board Property migrates and flows over, under and through the Property and has damaged the Property as of the date of this Agreement (the "Events"); and

WHEREAS, without admitting any liability with the respect to the Owner's allegations concerning the Events, the Board desires to settle with the Owner as specified herein to completely and forever resolve any and all alleged issues regarding the Events.

NOW, THEREFORE, based on the consideration contained herein and acknowledged as sufficient by the Parties, the Parties enter into the following Agreement based on the following terms and conditions:

1. **Construction of Storm Water Pipeline and Easement.** The Board shall construct a storm water pipe to address storm water run-off issues from the Board Property over, under and through the Property and other adjacent properties. A copy of the approximate location of the storm water pipe and the details thereof is attached to the Storm Water Pipeline Easement and Temporary Construction Easement (the "Easement"). In addition, the Easement makes certain requirements that after the installing of the storm water pipe, the Board shall promptly restore as nearly as practicable the Easement Area to its original condition. A copy of the Easement is incorporated herein and attached hereto as Exhibit A. Such restoration includes: patching and/or repaving any disturbed, paved driveway; returning the landscaped areas to the existing condition prior to construction; and re-seeding disturbed grass areas.

2. **Additional Issues.** In addition to the foregoing, the Board shall cause the following to be completed:

A. Remove existing river/and re-grade and re-seed the backyard at the end of all construction activities;

B. Plant the following three (3) trees to be located on the Property at a location to be determined by the Owner: i) White Dogwood (2-3" caliper); b) Pink Dogwood (2-3" caliper); and c) Red Maple (2-3" caliper); and

C. Along the eastern border of the Property, remove and replace three hundred feet (300') of a five-foot (5') chain link/ wooded fence and replace with three hundred feet (300') of black vinyl coated five-foot (5') fence. When replacing the fencing, the Board shall include three gates similar in location and size to those existing prior to the removal. Two gates shall be normal sized and one double gate to accommodate vehicles.

3. **Release.** In consideration of the terms and conditions and promises made herein by or on behalf of the Board, the Owner fully discharges and releases the Board and its current and future members, employees, representatives and agents of any and all past, present and future claims, demands, causes of actions, damages, costs, expenses, and liability of any nature whatsoever, whether in law or equity, whether known or unknown, arising out of the Events. The Owner fully understand that this Release is a full and complete general release of all claims against the Board, because of the Events, and is intended as a final settlement between the Board and Owner.

The Owner hereby specifically discharges any and all claim(s) they may have against the Board under North Carolina law, or any other federal, state, city, county, board of education or local statute, policy or ordinance, the common law, any term, provision, or amendment to the Constitution of the United States of America or to the Constitution of the State of North Carolina, or otherwise, and any and all claims for relief against the Board which have been or could have been asserted against it arising out of the Events.

The Owner also understands and agrees that this is a release not only of claims against the Board regarding alleged damages and injuries now known, and regarding any damages, injuries or complications that may develop in the future from said presently existing alleged injuries, but also for any additional injuries or complications thereof that may arise, directly or indirectly, from the Events, whether related or unrelated to the presently existing alleged damages, even though at the present time said additional injuries are completely unknown and unsuspected. The Owner further understands and agrees that the consideration contained in this Agreement is accepted not only for the injuries and damages that are now, or in the future may be, claimed to have resulted from the Events, but is also accepted to avoid the uncertainty, expense and delay of litigation. The Owner acknowledges that if they later discover facts different from, or in addition to, those which they now know or believe to be true concerning the Events that nevertheless this release shall be and remain effective in all respects.

The Owner understands and agrees that this Agreement represents the settlement of disputed allegations and is not intended to be, nor shall it be construed as, an admission of liability on the part of the Board.

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**4. Miscellaneous.**

A. This Agreement will be subject to and interpreted under the laws of the State of North Carolina. In the event that any provision or portion of the Agreement shall be found to be void or invalid for any reason, then such portion or provision shall be deemed severable from the remaining provisions or portions of this Agreement and shall not affect the validity of the remaining provisions, which shall be given full effect as if the void or invalid provision had not been included herein.

B. This Agreement contains the entire agreement between the Parties and the Parties agrees that the terms of this Agreement are contractual and not a mere recital.

C. Section headings are inserted for convenience of reference only, are not intended to be a part of this Agreement or in any way to define, limit or describe the scope and intent of the particular sections to which they refer, and accordingly shall not be deemed or construed to affect the meaning of any provision hereof.


D. If any provision of this Agreement is held to be invalid by any court of competent jurisdiction, the invalidity of such provision shall not affect the validity of the remaining provisions hereof.

E. This Agreement may be signed in counterpart and a signature page signed and sent to the other party via facsimile or email shall be treated as an original.

SIGNATURES ON FOLLOWING PAGE

IN WITNESS WHEREOF this Agreement is signed and sealed this 29th day of March 2018.

**OWNER**

  
CAROL ANDERSON

**BUNCOMBE COUNTY BOARD OF  
EDUCATION**

\_\_\_\_\_  
By: Dr. Tony Baldwin, Superintendent

Preaudit Statement:

This instrument has been preaudited in the manner required by the School Budget and Fiscal Control Act.

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Finance Officer

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IN WITNESS WHEREOF this Agreement is signed and sealed this 29th day of March 2018.

OWNER

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CAROL ANDERSON

**BUNCOMBE COUNTY BOARD OF  
EDUCATION**

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By: Dr. Tony Baldwin, Superintendent

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This instrument has been preaudited in the manner required by the School Budget and Fiscal Control Act.

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Deborah B. Hurby 3-29-18  
Finance Officer